

PT 01-28

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**CHINESE CHRISTIAN
UNION CHURCH,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No.

00-PT-0042

(98-16-1144)

P.I.N.S:

17-28-202-033

17-28-202-034

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Steven W. Huang of Ungaretti & Harris on behalf of the Chinese Christian Union Church (hereinafter the “applicant”).

SYNOPSIS: This matter presents the following issues: (1) whether applicant owned real estate identified by Cook County Parcel Index Numbers 17-28-202-033 and 17-28-202-034 (hereinafter collectively referred to as the “subject property”) during the 1998 assessment year; and, (2) whether the subject property was “used exclusively for religious purposes,” as required by Section 15-40 of the Property Tax Code (35 ILCS 200/1-1, *et seq.*) during the 1998 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on June 29, 1999. The Board reviewed applicant’s complaint and recommended to the Illinois Department Of Revenue

(hereinafter the “Department”) that part of the subject property be exempt. The Department rejected this recommendation by issuing a determination finding that the subject property is not in exempt ownership and not in exempt use. Applicant filed an appeal as to this denial and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at that hearing, I recommend that the Department’s determination be affirmed in part and reversed in part.

FINDINGS OF FACT:

1. The Department’s jurisdiction over this matter and its position therein are established by the admission of Dept. Ex. Nos. 1, 2, 3.
2. The Department’s position in this matter is that the subject property is not in exempt ownership and not in exempt use. *Id.*
3. The subject property is located at 2214 W. 22nd Place, Chicago, IL and improved with a three story building. Dept. Ex. No. 2; Tr. pp. 9, 11.
4. Applicant obtained ownership of the subject property by means of a U.S. Marshal’s deed dated February 8, 1995. Applicant Motion Ex. No. 6.
5. Applicant is an Illinois not-for-profit corporation organized for purposes of aggressively promoting advancement of the Christian faith in the Chinatown community and the greater Chicago metropolitan area. Its Articles of Incorporation, filed with the Illinois Secretary of State on September 18, 1961, specifically state that it is to fulfill its organizational purposes by promoting fellowship, engaging in Christian teaching and performing various charitable works in the community that it serves. Applicant Group Ex. No. 4; Tr. p. 32.

6. Applicant's main church facility, located at 2301 S. Wentworth, Chicago, IL, was exempted from real estate taxation pursuant to the determination in Docket No. 90-16-565, issued by the Office of Local Government Services on June 7, 1991. This exemption remained in full force and effect throughout the 1998 exemption year. Administrative Notice.
7. Applicant's community and social service center, located at 2212-20 S. Wentworth, received a partial exemption¹ from real estate taxation pursuant to the determination in Docket No. 96-16-1108, issued by the Office of Local Government Services on November 14, 1997. This partial exemption remained in full force and effect throughout the 1998 assessment year. Administrative Notice.
8. The subject property is located directly west of applicant's community and social service center. It is improved with a three story building that contains an 1,800 square foot basement and an unspecified number of apartment units on the first, second and third floors. Dept. Ex. No. 1-A; Tr. p. 18.
9. Applicant used the basement for fellowship meetings of its college-age ministry and other related groups throughout 1998; it rented the apartment units to low-income Chinese males throughout that time.² Tr. pp. 10-14, 18.
10. Applicant's rental rates ranged from \$210.00 per month for a 100 square foot room to \$230.00 for a 150 square foot room. It determined these rates by investigating standard market rates for similar rooms within the community. Applicant's rates were, however, below those market rentals. Tr. pp. 19-20.

1. The Department granted a partial exemption because part of the ground floor contained commercial space that applicant was not using. Therefore, the exemption applied only to those areas wherein applicant actually dispensed its community and social services. Administrative Notice.

11. Applicant rented the units at below market rates in hopes of providing community members with better places to stay and enabling residents to come into contact with the church. Tr. p. 21-22.

12. Applicant's income and expenses for the apartment units were as follows:

INCOME	AMOUNT	% of TOTAL
Source		
Rental Income	\$53,196.12	74%
Donation for Remodeling	\$18,300.00	26%
TOTAL INCOME	\$71,496.12	
EXPENSES		
Salary & Benefits	\$ 4,229.50	3%
Insurance	\$ 8,997.00	7%
Electricity	\$ 5,798.64	5%
Gas	\$ 9,824.30	8%
Water	\$ 5,145.76	4%
Real Estate Tax	\$ 21,999.26	17%
Legal Fees	\$ 2,100.00	2%
Building Supplies	\$ 1,881.88	1%
Maintenance & Repairs	\$ 43,436.36	34%
Remodeling Basement	\$ 23,824.01	19%
TOTAL EXPENSES	\$127,236.71	
RECONCILIATION:		
Total Expenses	\$127,236.71	
Total Income	\$ 71,496.12	
DEFICIT	(\$55,740.59)	

Applicant Ex. No. 7.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting part of the subject property from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et. seq.* Accordingly, under the

2. The uses described in this and all subsequent findings of fact shall be taken as 1998 uses

reasoning given below, the determination by the Department that the entirety of said property does not qualify for such exemption under 35 ILCS 200/15-40 should be affirmed in part and reversed in part. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1 *et seq.*, wherein the following are exempted from real estate taxation:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers ... performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations... [.]

A parsonage ... or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40.

Statutes conferring property tax exemptions are to be strictly construed so that all factual and legal inferences favor taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill.

unless context clearly specifies otherwise.

App.3d 430 (1st Dist. 1987). Consequently, applicant bears the burden of proving that the property it is seeking to exempt falls within the pertinent statutory exemption. *Id.*

The Department's determination in this matter indicates that the subject property does not fall within Section 15-40 because said property "is not in exempt ownership and not in exempt use." Dept. Ex. No. 3. The finding concerning lack of exempt ownership appears to be based on the Department's initial conclusion that the subject property was used as a parsonage.³ However, the evidence adduced at hearing demonstrates that said property was not used as a housing facility for clergy, as required by Section 15-40, during 1998. Even if it were so used, the U.S. Marshal's deed (Applicant Ex. No. 6) proves that applicant, a Christian church, owned the subject property throughout the pertinent tax year. Therefore, that portion of the Department's determination which found that the subject property was not in exempt ownership should be reversed.

With respect to exempt use, it is first noted that the word "exclusively" when used in Section 15-40 and other property tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Furthermore, the "religious purposes" contemplated by Section 15-40 are those which involve the use of real estate by religious societies or persons as a stated places for public worship, Sunday schools and religious instruction. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

3. For further analysis of the exempt ownership requirement for parsonages, see, McKenzie v. Johnson, 98 Ill.2d 87 (1983).

Here, applicant used the subject property for two distinct purposes. One of those uses, namely the fellowship meetings applicant held in the 1,800 square foot basement qualifies as “exclusively religious.” The other use, associated with renting of the apartment units located on the first, second and third floor, does not so qualify because it appears primarily attuned to the non-exempt purpose of producing income for the applicant-owner. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

Applicant may rent these units at lower than market rates. However, the rates applicant charges are well in excess of anything that can reasonably be considered as nominal, *de minimus* or token rent. Accordingly, the primary use of the subject property after accounting for the leasing function remains to produce income for the applicant-owner. Hence, the mere fact that applicant elects to produce that income by charging below market rates is not determinative.

Moreover, whatever “religious” use applicant may have made of the apartment units through evangelization of tenants and the like was clearly incidental to the non-exempt use associated with income production. As noted above, it is the primary, rather than incidental, use of real estate that is determinative on the question of exempt use. Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, *supra*. Therefore, I conclude that although the 1,800 square foot basement was in exempt use throughout 1998, the rental units located on the first, second and third floors were not.

Where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is proper to exempt those

parts that are in actual, exempt use and subject the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971). Based on the foregoing, I conclude that the 1,800 square foot basement area contained within the building improvement situated on the subject property should be exempted from 1998 real estate taxes under Section 15-40 of the Property Tax Code. Therefore, I recommend that the portion of the Department's determination which found that the basement area was not in exempt use be reversed.

I further conclude that the apartment units located on the first, second and third floors should not be exempted from 1998 real estate taxes under Section 15-40 of the Property Tax Code because such units were primarily used for the non-exempt purpose of producing income for the applicant-owner. People ex. rel. Baldwin v. Jessamine Withers Home, *supra*; Salvation Army v. Department of Revenue, *supra*. Therefore, I recommend that those portions of the Department's determination pertaining to the first, second and third floors of the building improvement located on the subject property be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that:

1. The 1,800 square foot basement area contained within the building improvement situated on real estate identified by Cook County Parcel Index Numbers 17-28-202-033 and 17-28-202-034, and a corresponding percentage of the ground underlying that basement area, be exempt from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq*; but,

2. All other portions of said building improvement, to wit, the first, second and third floors thereof, together with all of the land underlying such other portions, not be exempt from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

March 28, 2001

Date

Alan I. Marcus
Administrative Law Judge